



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 6899-99
14 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy applied to this Board requesting, in effect, that his reenlistment code be changed.

2. The Board, consisting of Messrs. Lightle, McCulloch, and Silberman reviewed Petitioner's allegations of error and injustice on 9 February 2000, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 4 January 1999 for four years at age 23. On 19 January 1999 he was diagnosed with

alcohol dependency, a learning disorder, and unspecified personality disorder, with borderline and schizotypal features.

d. On 26 January 1999 Petitioner was notified that discharge was being considered by reason of erroneous enlistment as evidenced by alcohol dependence. He was advised of his procedural rights but declined to consult with counsel and waived right to have his case reviewed by the general court-martial convening authority.

e. On 29 January 1999 the discharge authority directed that Petitioner's enlistment be voided and was so separated by reason of "erroneous enlistment-alcohol abuse" on 3 February 1999 and assigned an RE-4 reenlistment code.

f. The DD Form 214 issued on Petitioner's separation has all zeros entered in the record of service section (block 12). It states in the remarks section (block 18) "ENTERED: 99JAN04/RELEASED: 98FEB03 [sic]. Enlistment Void. This release does not constitute a discharge and a discharge certificate has not be issued."

g. Federal law requires that an enlistment be voided if an individual is determined to be drug or alcohol dependent. However, the law also states that testing and evaluation to determine dependence must be conducted within 72 hours after the individual begins active duty. If an individual's is discharged within 180 days of beginning active service, an uncharacterized entry level separation is normally issued.

h. The Board is also aware that an individual can be separated due to an erroneous enlistment if there is a condition which, had it been known prior to enlistment, would have prevented enlistment. Alcohol dependence is such a condition. The applicable regulation requires the assignment of an RE-4 reenlistment code to individuals discharged by reason of "erroneous enlistment-alcohol abuse."

i. Petitioner states, in effect, that the diagnoses of alcohol dependence and personality disorder are incorrect. He claims that at the time of discharge, he was suffering from pneumonia.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable

action. In this regard, the Board believes that Petitioner's enlistment could properly have been voided if the diagnosis of alcohol dependence had been made within 72 hours, as required by law. However, since Petitioner was not diagnosed as alcohol dependent until 15 days after his enlistment, the diagnosis of dependence was not made within the time limits prescribed by law. Therefore, the Board concludes that Petitioner's enlistment was inappropriately voided, and that the record should be corrected to show that he received an uncharacterized entry level separation by reason of erroneous enlistment.

Concerning the reenlistment code, the Board notes that regulations require the assignment of an Re-4 reenlistment code when an individual is separated by reason of erroneous enlistment due to alcohol abuse. Since Petitioner provides no medical evidence refuting the Navy's diagnosis of alcohol dependence, the Board concludes that the reenlistment code was proper and no change is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by issuing him a new DD Form 214 which reflects that he served on active duty from 4 January to 3 February 1999 and on the latter date he was discharged with an uncharacterized entry level separation by reason of erroneous enlistment.

b. That no further relief be granted.


c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board together with a copy of this Report of Proceedings, for retention in a

confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

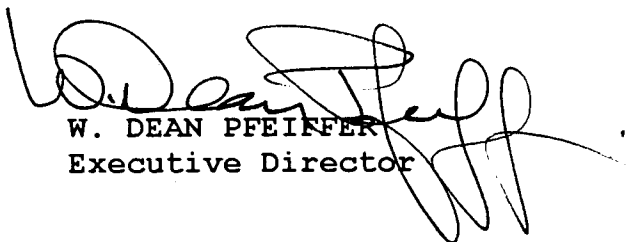
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director